



# CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Rejecting Non-Responsive Bid, Authorizing City Manager to Execute Contract for City of Lodi Facility Painting Project with OnPoint Construction, of Millbrae (\$53,140), and Appropriating Funds (\$23,584)

**MEETING DATE:** January 18, 2012

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Adopt resolution rejecting non-responsive bid, authorizing City Manager to execute contract for City of Lodi facility painting project with OnPoint Construction, of Millbrae, in the amount of \$53,140, and appropriating funds in the amount of \$23,584.

**BACKGROUND INFORMATION:** This project consists of various painting needs and some minor repair work at various City facilities. Locations include two trailers and the equipment bays located at the Municipal Service Center, Fire Station No. 4, City Hall, and the Carnegie Forum.

Specifications for this project were approved on November 16, 2011. The City received the following 14 bids for this project on December 14, 2011.

Bidder	Location	Bid
Engineer's Estimate		\$60,100
Pro-Ex Painting & Decorating	Mather	\$41,333
OnPoint Construction	Millbrae	\$53,140
Michael Watson Painting	Chico	\$55,478*
Color New Company	Woodland Hills	\$55,500
Tony Painting	Garden Grove	\$57,850
Seven Island Painting	Daly City	\$58,000
Northern California Painting	Penryn	\$58,350
River City Painting	Sacramento	\$58,350
A & A Painting	San Jose	\$59,891
Bella Painting	Fairfield	\$69,950
Affordable Painting Service	Sacramento	\$71,500
Pacific Painting Company	Northridge	\$78,000
BA Painting	West Sacramento	\$78,900
TPA Construction	Rocklin	\$85,410

\*Corrected Total

Pro-Ex Painting & Decorating (Pro-Ex) is the apparent low bidder. However, Pro-Ex has a probationary contractors' license pursuant to Business and Professions Code Section 7073. Section 7073 allows the Contractors' License Board to deny a license or in its discretion issue a probationary license to

APPROVED:

Konrad Bartlam, City Manager

contractors who fall within the proscriptions of Business and Professions Code Section 480. Section 480 only allows a denial or probation for a "crime or act [that] is substantially related to the qualifications, functions or duties of the business or profession for which application is made." Cities may reject an apparent low bidder upon a finding that the apparent low bidder is not responsible (Public Contracts Code Section 1103). A responsible bidder is one who has "demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work. Pro-Ex, having committed a crime or act in connection with its contractor's license that violates the Contractors' License law, could be found non-responsible. After consulting with the City Attorney, staff recommends rejecting the Pro-Ex bid and awarding the contract to the second low bidder, OnPoint Construction.

**FISCAL IMPACT:** This project will prevent further damage to City facilities.

**FUNDING AVAILABLE:** This project will use the following funds:

Electric Utility Administration (160601)	\$3,575
Water Operating (170401)	\$6,555
Wastewater Operating (180451)	\$6,555
Streets Operating (3215011)	\$4,767
Building Maintenance (103511)	\$8,360
General Fund Capital (1211)	\$5,060

Requested Appropriation:

Transit Facilities Upgrades (125179)	\$8,184
Streets Capital (320)	\$15,400
Total (including contingency):	\$58,456

  
\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

  
for \_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

Prepared by John Munoz, Facilities Supervisor

FWS/JM/pmf

cc: Charlie Swimley, Deputy Public Works Director - Utilities  
Elizabeth Kirkley, Electric Utility Director  
Pro-Ex Painting & Decorating  
OnPoint Construction

**CITY OF LODI  
FACILITY PAINTING PROJECT**

**CONTRACT**

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CITY OF LODI, CALIFORNIA

THIS CONTRACT made by and between the CITY OF LODI, State of California, herein referred to as the "City," and ONPOINT CONSTRUCTION, herein referred to as the "Contractor."

**WITNESSETH:**

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

The complete Contract consists of the following documents which are incorporated herein by this reference. to-wit:

Notice Inviting Bids	The July 1992 Edition,
Information to Bidders	Standard Specifications,
General Provisions	State of California,
Special Provisions	Business and Transportation Agency,
Bid Proposal	Department of Transportation
Contract	
Contract Bonds	
Plans	

All of the above documents, sometimes hereinafter referred to as the "Contract Documents," are intended to cooperate so that any work called for in one and not mentioned in the other is to be executed the same as if mentioned in all said documents.

ARTICLE I - That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City and under the condition expressed in the two bonds bearing even date with these presents and hereunto annexed, the Contractor agrees with the City, at Contractor's cost and expense, to do all the work and furnish all the materials except such as are mentioned in the specifications to be furnished by the City, necessary to construct and complete in a good workmanlike and substantial manner and to the satisfaction of the City the proposed improvements as shown and described in the Contract Documents which are hereby made a part of the Contract.

ARTICLE II - The City hereby promises and agrees with the Contractor to employ, and does hereby employ, the Contractor to provide all materials and services not supplied by the City and to do the work according to the terms and conditions for the price herein, and hereby contracts to pay the same as set forth in Section 5.600, "Measurement, Acceptance and Payment," of the General Provisions, in the manner and upon the conditions above set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III - The Contractor agrees to conform to the provisions of Chapter 1, Part 7, Division 2 of the Labor Code. The Contractor and any Subcontractor will pay the general prevailing wage rate and other employer payments for health and welfare, pension, vacation, travel time, and subsistence pay, apprenticeship or other training programs. The responsibility for compliance with these Labor Code requirements is on the prime contractor.

ARTICLE IV - And the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage arising out of the nature of the work aforesaid or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the Plans and Contract Documents and the requirements of the Engineer under them, to-wit:

Perform the work necessary to complete the painting of various City facilities at seven different locations throughout the City, including various painting needs and some minor repair work, as shown on the exhibits and described in this specification, and other incidental and related work, all as shown on the plans and specifications for the City of Lodi Facility Painting Project.

#### CONTRACT ITEMS

ITEM NO.	DESCRIPTION	UNIT	EST'D. QTY	UNIT PRICE	TOTAL PRICE
1	Site No. 1	LS	1	\$ 3,250.00	\$ 3,250.00
2.	Site No. 2	LS	1	\$ 3,250.00	\$ 3,250.00
3.	Site No. 3	LS	1	\$ 13,000.00	\$13,000.00
4.	Site No. 4	LS	1	\$ 7,440.00	\$ 7,440.00
5.	Site No. 5	LS	1	\$ 7,600.00	\$ 7,600.00
6.	Site No. 6	LS	1	\$ 4,600.00	\$ 4,600.00
7.	Site No. 7	LS	1	\$ 14,000.00	\$14,000.00
TOTAL					\$53,140.00

The Contractor's attention is directed to Section 8-1.05 "Temporary Suspension of Work" of the Standard Specifications. It is the City's intention to delay start of work until weather conditions are suitable.

ARTICLE V - By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ARTICLE VI - It is further expressly agreed by and between the parties hereto that, should there be any conflict between the terms of this instrument and the Bid Proposal of the

Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE VII - The City is to furnish the necessary rights-of-way and easements and to establish lines and grades for the work as specified under the Special Provisions. All labor or materials not mentioned specifically as being done by the City will be supplied by the Contractor to accomplish the work as outlined in the specifications.

ARTICLE VIII - The Contractor agrees to commence work pursuant to this contract within 15 calendar days after the City Manager has executed the contract and to diligently prosecute to completion within **60 WORKING DAYS**.

WHEN SIGNING THIS CONTRACT, THE CONTRACTOR AGREES THAT THE TIME OF COMPLETION FOR THIS CONTRACT IS REASONABLE AND THE CONTRACTOR AGREES TO PAY THE CITY LIQUIDATED DAMAGES AS SET FORTH IN SECTION 6-04.03 OF THE SPECIAL PROVISIONS. CONTRACTOR AGREES THAT THIS AMOUNT MAY BE DEDUCTED FROM THE AMOUNT DUE THE CONTRACTOR UNDER THE CONTRACT.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date written below.

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CONTRACTOR:

CITY OF LODI

\_\_\_\_\_  
By: \_\_\_\_\_  
Konradt Bartlam  
City Manager

By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Attest:  
Title  
\_\_\_\_\_  
City Clerk

(CORPORATE SEAL)

Approved As To Form

\_\_\_\_\_  
D. Stephen Schwabauer  
City Attorney



1. AA# \_\_\_\_\_  
2. JV# \_\_\_\_\_

## CITY OF LODI APPROPRIATION ADJUSTMENT REQUEST

TO: Internal Services Dept. - Budget Division  
3. FROM: Rebecca Areida-Yadav 5. DATE: 01/04/2012  
4. DEPARTMENT/DIVISION: Public Works

### 6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW

	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	1211	1211000	1820	Capital Projects - New	\$ 5,060.00
	320		3205	Fund Balance	\$ 15,400.00
	1250		5493	TDA	\$ 8,184.00
B. USE OF FINANCING	1211	1211784	1825.2250	Facility Painting	\$ 5,060.00
	320	320122	7720	Facility Painting	\$ 15,400.00
	1251	125179	7720	Facility Upgrades	\$ 8,184.00

### 7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET

Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.

Contract with OnPoint Construction for the facility painting project.

Council has authorized the appropriation adjustment, complete the following

Meeting Date \_\_\_\_\_ Res No \_\_\_\_\_ Attach copy of resolution to this form

Department Head Signature Cheryl E. for PWS

### 8. APPROVAL SIGNATURES

Deputy City Manager/Internal Services Manager

Date

Submit completed form to the Budget Division with any required documentation  
Final approval will be provided in electronic copy format.

RESOLUTION NO. 2012-02

A RESOLUTION OF THE LODI CITY COUNCIL  
REJECTING NON-RESPONSIVE BID,  
AWARDING CONTRACT FOR CITY OF LODI  
FACILITIES PAINTING PROJECT, AUTHORIZING  
THE CITY MANAGER TO EXECUTE CONTRACT  
AND FURTHER APPROPRIATING FUNDS

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WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on December 14, 2011, at 11:00 a.m., for the City of Lodi Facilities Painting Project, described in the specifications therefore approved by the City Council on November 16, 2011; and

WHEREAS, said bids have been checked and tabulated and a report thereof filed with the City Manager as follows:

<b>Bidder</b>	<b>Bid</b>
Pro-Ex Painting & Decorating	\$ 41,333
OnPoint Construction	\$ 53,140
Michael Watson Painting	\$ 55,478*
Color New Company	\$ 55,500
Tony Painting	\$ 57,850
Seven Island Painting	\$ 58,000
Northern California Painting	\$ 58,350
River City Painting	\$ 58,350
A & A Painting	\$ 59,891
Bella Painting	\$ 69,950
Affordable Painting Service	\$ 71,500
Pacific Painting Company	\$ 78,000
BA Painting	\$ 78,900
TPA Construction	\$ 85,410
*Corrected Total	

WHEREAS, Pro-Ex Painting & Decorating, the apparent low bidder, has a probationary contractors' license pursuant to Business and Professions Code Section 7073. Section 7073 allows the Contractors' License Board to deny a license or in its discretion issue a probationary license to contractors who fall within the proscriptions of Business and Professions Code Section 480. Section 480 only allows a denial or probation for a "crime or act [that] is substantially related to the qualifications, functions or duties of the business or profession for which application is made." Cities may reject an apparent low bidder upon a finding that the apparent low bidder is not responsible (Public Contracts Code Section 1103). A responsible bidder is one who has "demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work; and

WHEREAS, staff recommends rejecting the non-responsive bid and awarding the contract for the City of Lodi Facilities Painting Project to the lowest responsive bidder, OnPoint Construction, of Millbrae, California, in the amount of \$53,140.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby reject the non-responsive bid and award the contract for the City of Lodi Facilities Painting Project to the lowest responsive bidder, OnPoint Construction, of Millbrae, California, in the amount of \$53,140; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the contract; and

BE IT FURTHER RESOLVED that funds in the amount of \$23,584 be appropriated from the Transit Facilities Upgrade Fund and the Streets Capital Fund for this project.

Dated: January 18, 2012

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I hereby certify that Resolution No. 2012-02 was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Katzakian, Nakanishi, and  
Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Johnson

ABSTAIN: COUNCIL MEMBERS – None

  
RANDI JOHL  
City Clerk



CITY COUNCIL

JOANNE L. MOUNCE, Mayor  
ALAN NAKANISHI,  
Mayor Pro Tempore  
LARRY D. HANSEN  
BOB JOHNSON  
PHIL KATZAKIAN

**CITY OF LODI**  
**PUBLIC WORKS DEPARTMENT**

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6706  
FAX (209) 333-6710  
EMAIL [pwdept@lodi.gov](mailto:pwdept@lodi.gov)  
<http://www.lodi.gov>

KONRADT BARTLAM  
City Manager  
RANDI JOHL  
City Clerk  
D. STEVEN SCHWABAUER  
City Attorney  
F. WALLY SANDELIN  
Public Works Director

January 12, 2012

Pro-Ex Painting and Decorating  
4602 Excelsior Road  
Mather, CA 95055

OnPoint Construction  
8 Seville Court  
Millbrae, CA 94030

SUBJECT: Adopt Resolution Rejecting Non-Responsive Bid, Authorizing City Manager to Execute Contract for City of Lodi Facility Painting Project with OnPoint Construction, of Millbrae (\$53,140) and Appropriating Funds (\$23,584)

Enclosed is a copy of background information on an item on the City Council agenda of Wednesday, January 18, 2012. The meeting will be held at 7 p.m. in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council Meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Randi Johl, City Clerk, at (209) 333-6702.

If you have any questions about the item itself, please call John Munoz, Facilities Supervisor, at (209) 333-6800, extension 2692.

  
for: F. Wally Sandelin  
Public Works Director

FWS/pmf

Enclosure

cc: City Clerk